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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,333	04/22/2005	Thomas Lich	10191/3768	9141
26646 7590 05/01/2008 KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004				
EXAMINER GOODEN JR, BARRY J				
ART UNIT 3616		PAPER NUMBER		
MAIL DATE 05/01/2008		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/532,333

Applicant(s)

LICH, THOMAS

Examiner

BARRY J. GOODEN JR

Art Unit

3616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8 April 2008 has been entered.

Currently, claims 10-18 are pending. Claim 10 is amended.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 10 -18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In the instant case, claim 10 recites "measures **only** in a substantially vertical direction" however, the specification does not provide support for the claim terminology.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 10-13 and 16 are rejected under 35 U.S.C. 102(B) as being anticipate by Andre et al., DE 19822184.

In regards to claims 10-13 and 16, Andre et al. discloses all of the claimed elements including a device for detecting an obstacle underride, comprising:

at least one vertical distance measuring device (2) situated on a vehicle front in such a way as to detect an obstacle underride, wherein the vertical distance measuring device measures in a substantially vertical direction (Reference is made to Figures 1 and 2) away from a vehicle underside (Reference is made to Figure 2);

wherein the vertical distance measuring device includes at least one transceiver;

wherein the at least one transceiver includes one of an ultrasonic sensor or a radar sensor;

wherein the vertical distance measuring device includes at least one video sensor; and,

wherein the device is connectable to a control unit for restraining means in such a way that the control unit triggers the restraining means as a function of a signal of the device (Reference is made to Figure 2 and the Abstract).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 14, 15, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andre et al.

In regards to claims 14 and 18, Andre et al. discloses all of the claimed elements excluding the vertical distance measuring device explicitly located on a bumper or the vertical distance measuring device being situated on the rear bumper.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have located the vertical distance measuring device on the front or rear bumper, since it has been held that rearranging parts of an invention involves only routine skill in the art.

In regards to claim 15, Andre et al. discloses all of the claimed elements excluding the at least one device comprising four vertical distance measuring devices.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided four vertical distance measuring devices as claimed, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art.

7. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Andre et al. in view of Cho, US Patent 6,408,237.

In regards to claim 17, Andre et al. discloses all of the claimed elements excluding the device configured for the purpose of sensing pedestrians.

Cho discloses a system utilizing EM radiation (radar) or ultrasonic device wherein the device is configured for the purpose of sensing pedestrians.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Andre et al. in view of the teachings of Cho to include the device configured for the purpose of sensing pedestrians so as to prevent damage to pedestrians during collision thereby increasing safety.

Examiner notes with respect to claim 10, the recitation that the device situated on a vehicle front "in such a way to detect", does not serve to distinguish because it is a functional recitation. Furthermore it has been held that performing a function is not a positive limitation but only requires the ability to so perform. Examiner suggests replacing with a positive structural recitation.

Examiner notes with respect to claim 17, the recitation wherein the device "is configured for the purpose of sensing pedestrians", does not serve to distinguish because it is a functional recitation. Furthermore it has been held that performing a function is not a positive limitation but only requires the ability to so perform. Examiner suggests replacing with a positive structural recitation.

Response to Arguments

8. Applicant's arguments filed April 8, 2008 have been fully considered but they are not persuasive.

Examiner maintains the previous rejection is proper. Further, in response to the applicant's arguments concerning the amendments the examiner does not find support for the amended claim terminology.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BARRY J. GOODEN JR whose telephone number is (571)272-5135. The examiner can normally be reached on Monday-Friday 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (571) 272-6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3611

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Barry J Gooden Jr.
Examiner
Art Unit 3616

BJG

/Kevin Hurley/
Acting SPE of Art Unit 3616